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09/876,173	06/08/2001	Steven Rizzi	000479.00023	5726
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JANVIER, JEAN D				
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1 UNITED STATES PATENT AND TRADEMARK OFFICE  
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4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
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8 *Ex parte* STEVEN RIZZI and CHRISTIAN BRIDGERS  
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10 Appeal 2010-005160  
11 Application 09/876,173  
12 Technology Center 3600  
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17 Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and  
18 ANTON W. FETTING, *Administrative Patent Judges*.  
19 FETTING, *Administrative Patent Judge*.  
20  
21

22 DECISION ON APPEAL

STATEMENT OF THE CASE<sup>1</sup>

Steven Rizzi and Christian Bridgers (Appellants) seek review under 35 U.S.C. § 134 (2002) of a non-final rejection of claims 1-4, 8-9, and 11-40, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellants invented a way of providing advertising that is tailored to the user without creating a profile of the user. This provides context sensitive promotion based on text contained in an Internet browser designed to maximize the amount of application intelligence on the client end, such that privacy issues and concerns may be mitigated (Spec. ¶ 0001).

An understanding of the invention can be derived from a reading of exemplary claim1, which is reproduced below (bracketed matter and some paragraphing added).

1. A system for providing Internet advertising, comprising:
  - [1] an advertising server comprising
    - a web server having at least one applet,
  - [2] said advertising server further comprising
    - a database
    - and
    - a servlet
- for sending said at least one applet to a web browser on another computer
- and
- receiving textual content read from said web browser by said at least one applet,

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<sup>1</sup> Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed October 31, 2008) and Reply Brief ("Reply Br.," filed December 29, 2009), and the Examiner's Answer ("Ans.," mailed November 9, 2009).

[3] said advertising server comparing  
said textual content  
to  
keyword data stored in said database  
to determine whether to display an ad on said web  
browser,  
[4] wherein no user profiling data is forwarded to the  
advertising server.

The Examiner relies upon the following prior art:

Graham US 6,804,659 B1 Oct. 12, 2004

Claims 1-4, 8-9, and 11-40 stand rejected under 35 U.S.C. § 102(e) as  
anticipated by Graham.<sup>2</sup>

#### ISSUES

The issues of anticipation turn primarily on whether Graham shows  
embodiments in which no user profiling data is forwarded to an advertising  
server.

#### FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be  
supported by a preponderance of the evidence.

*Facts Related to the Prior Art - Graham*

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<sup>2</sup> The Examiner withdrew the rejections of claims 1-40 under § 102 as anticipated by a PR Newswire article at Answer 6. The Examiner also did not carry the rejections of claim 6 under 35 U.S.C. § 112, second paragraph as indefinite, and of claims 5-7 and 10 under § 102 as anticipated by Graham into the Answer. Thus these rejections are also considered as being withdrawn.

01. Graham is directed to internet target marketing for distributing  
online advertising to viewers based upon the viewers' interests.  
Graham 1:51-54.

02. Graham can target advertising to a user based upon content of an  
active document, such as one that is presently displayed to a user,  
or one that is being processed by a daemon or background  
process. Graham analyzes at least one document to identify  
discussion of information corresponding to one or more user  
selectable concepts of interest. This analysis can provide user  
concept relevance, a measure of relevance of the document to one  
or more concepts defined by the user, and identify discussion of  
information corresponding to one or more advertiser selectable  
concepts of interest. Graham 1:66-2:13.

03. Graham uses a content recognizer to analyze a document the user  
is reading to find words that may be used to in turn find relevant  
ads. A user's profile can also be used to highlight certain words in  
a document a user is reading. Those highlighted words, in turn,  
can be compared to advertising concepts to determine an  
appropriate ad. Graham describes embodiments using and not  
using the highlighting from a user profile. Graham 5:40-6:47.

04. User profiles are not sent to the server sending the advertisements  
and are not shared with advertisers. Graham 8:16-27.

05. Graham can also rely exclusively on content analysis without  
resorting to user profiles. Graham 8:29-33.

06. Graham shows that the advertisements themselves, apart from the analysis, comes from an advertising server separate from the user's browser. Graham Fig. 1A.

07. Graham describes how if the relevance computed for a given document is below a threshold, no advertisement is displayed. Graham 10:40-44.

#### ANALYSIS

*Claims 1-4, 8-9, and 11-40 rejected under 35 U.S.C. § 102(e) as anticipated by Graham.*

We are unpersuaded by the Appellants' argument that Graham fails to describe no user profiling data being forwarded to the advertising server. Graham uses several embodiments, some using user profiles and some not. Those that do not, relying exclusively on content analysis of what a user is reading, inherently refrain from forwarding user profiling data, as there is none used to forward. But Graham also describes embodiments where any user profiling data that might be used is retained on the user's computer, since the analysis may be done on the user's computer. FF 01-05. Since the advertisements come from an external server, the advertising server is not on the user's computer. FF 06. We find it unnecessary to unravel the claim construction issue the Appellants pose regarding whether the advertising server is necessarily separate in the claim, since Graham shows such a separate server and the claim clearly admits to such an embodiment.

As to claim 23, displaying no ad when there is no match, contrary to the Appellants' contention at Appeal Brief 5, Graham displays no ad under such circumstances. FF 07.

1 As to claims 34-36, wherein no data is collected to profile a user,  
2 contrary to the Appellants' contention at Appeal Brief 5, Graham describes  
3 this as one embodiment, relying only on content analysis. FF 03 and 05.

4 As to claim 38, the Appellants' argument relies essentially on the  
5 arguments in support of claim 1.

6  
7 CONCLUSIONS OF LAW

8 The rejection of claims 1-4, 8-9, and 11-40 under 35 U.S.C. § 102(e)  
9 as anticipated by Graham is proper.

10  
11 DECISION

12 The rejection of claims 1-4, 8-9, and 11-40 under 35 U.S.C. § 102(e)  
13 as anticipated by Graham is sustained.

14 No time period for taking any subsequent action in connection with  
15 this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R.  
16 § 1.136(a)(1)(iv).

17  
18 AFFIRMED  
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23 hh